IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT ETITION NO. 1320 OF 20004

ANUJ P. SHAH PETITIONER

Vs.

UNION OF INDIA & ORS. .. RESPONDENTS

Mr. D.H. Mehta i/b T. V. Shah for petitioners

Mr. P.S. Jetly with D. A. Dube & Y. R. Mishra for R

CORAM:-SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:-28/11/2005

P.C.

1. In this petiton, the petitioner has prayed that respondent 2 i.e. the Chief Enforcement Officer, Enforcement Directorate, Mumbai be asked to withdraw the order, directives and/or instructions contained in letter dated 27/6/1994 issued to the Panchratna Co-operative Housing Society, Opera House, Mumbai.

2. We have learned counsel for the parties.

3. The learned counsel for the petitioner contended that by the impugned order the 2nd respondent has directed the Secretary of the Panchratna Cooperative Housing Society not to allow the party either to sell or transfer the premises of Unit No. 614 on 6th floor without clearance from the Enforcement Directorate. It is further stated that this letter may be treated as an order issued under Section 33(2) of the Foreign Exchange Regulation Act, 1973 ("the said Act" for short).

4. Our attention is drawn to Section 33(2) of the said Act which reads thus:-

"Where for the purposes of this Act the Central Government or theReserve Bank or any officer of Enforcement, not below the rank of a Chief Enforcement Officer, considers it necessary or expedient to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank or such officer it is possible for such person to obtain and furnish, the Central Government or the Reserve Bank or, as the case may be, such officer may, by order in writing, require any such person (whose name shall

be specified in the order) to furnish, or to obtain and furnish, to the Central Government or the Reserve Bank or such officer or any person specified in the order with suchinformation, book or other document and thereupon such person shall be bound to comply with such requisition."

The learned counsel contended that this section does not empower the enforcement directorate to pass any restraint order.

5. Having perused Section 33(2) of the said Act, we are in agreement with the learned counsel. Such a direction could not have been given under Sectin 33(2) of the said Act. We, therefore, quash and set aside the said direction issued in letter dated 27/6/94 which is impugned in this petition.

6. We however, make it clear that this shall not preclude the respondents if they so desire from taking any action which will be legally permissible against the petitioner. This order shall not affect the proceedings which are pending against the father of the petitioner. We make it clear that, we have not expressed any opinion, on the merits of the case.

8. Petiton is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)